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FILED  
JUL 14 1997  
CLERK OF DISTRICT COURT  
DISTRICT OF IDAHO  
BOISE

64628

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO**

In re:

PAUL REES HARWARD and JANET  
LOUISE HARWARD, dba HARWARD  
HOMES,  
Debtors.

Case No. 97-02754

**MOTION FOR STAY RELIEF**

COMES NOW **FIRST SECURITY BANK OF IDAHO, N.A.** ("First Security"), and, pursuant to 11 U.S.C. § 362 and LBR 4001.2, moves the Court to remove the automatic stay existing by virtue of § 362 Title 11 U.S.C. on the below-described property so as to permit First Security to foreclose its lien upon the same.

The subject property is described as follows:

Deposit Account 0008-999-2749975 issued by First Security in the amount of \$15,000.

(the "CD").

First Security respectfully represents the following in support of this Motion:

1. Paul R. Harward, (the "Debtor") filed a Chapter 7 petition with the Court on September 8, 1997 (the "Petition Date"). The Trustee is the duly qualified and acting trustee of

the Debtor's Chapter 7 estate.

2. First Security is the holder of a secured claim against the Debtor and is a party in interest in this case.

3. On or about June 19, 1997 the Debtor executed an Application, Agreement, and Note for Stand-By Documentary Credit (the "Note") wherein the Debtor applied to First Security for the issuance of an irrevocable letter of credit in the amount of \$15,000. A true and correct copy of the Note is attached hereto as Exhibit A and, by this reference, incorporated herein as if set forth in full.

4. On or about June 26, 1997 the Debtor executed an Assignment of Deposit Account (the "Security Agreement") wherein the Debtor granted First Security a security interest in the CD to secure the indebtedness evidenced by the Note. A true and correct copy of the Security Agreement is attached hereto as Exhibit B and, by this reference, incorporated herein as if set forth in full.

5. On or about June 27, 1997 First Security issued an Irrevocable Standby Letter of Credit No. S-0029945-9001 in the amount of \$15,000 and expiring on July 24, 1999 (the "Letter of Credit") for the benefit of Residential Warranty Corporation ("RWC"). A true and correct copy of the Letter of Credit is attached hereto as Exhibit C and, by this reference, incorporated herein as if set forth in full.

6. On or about June 25, 1999, RWC requested payment of the Letter of Credit and presented a sight draft in the amount of \$15,000 (the "Sight Draft"). A true and correct copy of RWC's written request for payment is attached hereto as Exhibit D and, by this reference, incorporated herein as if set forth in full. A true and correct copy of RWC's Sight Draft is attached hereto as Exhibit E and, by this reference, incorporated herein as if set forth in full.

7. On or about July 12, 1999, First Security honored the Sight Draft by Check No. 210084320, payable to RWC in the amount of \$15,000 (the "Check"). A true and correct

copy of the Check is attached hereto as Exhibit F and, by this reference, incorporated herein as if set forth in full.

8. First Security has perfected its security interest in the CD by its possession thereof at all times relevant hereto.

9. First Security is entitled to relief from the stay under 11 U.S.C. § 362(d)(2) for the reason that the Debtor has defaulted under the Note and Security Agreement by failing to pay the principal amount of the Letter of Credit and by the filing of this Bankruptcy proceeding. In addition, the stay is not necessary to an effective reorganization in that this is a Chapter 7 proceeding. Further, First Security has not been provided with adequate protection for its security interest in the CD.

WHEREFORE, First Security prays for relief as follows:

1. That the stay be annulled pursuant to Title 11 U.S.C. § 362(d) so as to permit First Security to foreclose its security interest in the CD in accordance with the Application, the Security Agreement, and applicable state law; and
2. That the Court grant First Security such other and further relief as is just and proper.

Dated this 14th day of July, 1999.

HOLLAND & HART LLP

By 

Jeffrey F. Drake, for the firm  
Attorneys for First Security Bank of Idaho, N.A.

**CERTIFICATE OF MAILING**

I hereby certify that on this 14<sup>th</sup> day of July, 1999, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John H. Krommenhoek  
Trustee  
5019 Emerald  
P.O. Box 8358  
Boise, Idaho 83707  
Facsimile: 375-5477

By facsimile followed by U.S. Mail

W. Jed Manwaring  
Evans Keane LLP  
1101 W. River Street, Suite 200  
Boise, ID 83702  
Facsimile: 345-3514

By facsimile followed by U.S. Mail

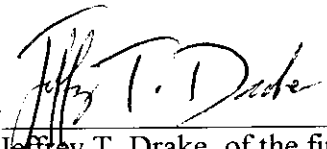
D. Blair Clark  
Ringert Clark Chartered  
P.O. Box 2773  
455 S. 3<sup>rd</sup>  
Boise, ID 83701  
Facsimile: 342-4657

By facsimile followed by U.S. Mail

U.S. Trustee  
304 N. 8<sup>th</sup> Street, Suite 347  
P.O. Box 110  
Boise, ID 83701  
Facsimile: 334-9756

By facsimile followed by U.S. Mail

HOLLAND & HART LLP

By   
\_\_\_\_\_  
Jeffrey T. Drake, of the firm

BOISE:0107806.01

APPLICATION, AGREEMENT  
FOR STAND-BY DOCUMENT. **NOTE**  
EDIT**First Security Bank® of Idaho**

Date of Application

6/19/97

LOC Number (If for Bank Use Only)

Nampa  
NampaOffice  
IdahoAdvise by: ☐ Cable Short Details  
☐ Mail directly to beneficiary☐ Cable Full Details  
☐ Beneficiary will pick up

Advising Bank (if blank, correspondent bank)

For Account of (Applicant's Name &amp; Address)

Paul R Harward  
1546 E Fairview  
Meridian, ID 83642

In Favor of (Beneficiary's Name &amp; Address)

Residential Warranty Corporation  
5300 Derry Street  
Harrisburg, PA 17111-3598Amount (Indicate Currency Type - i.e. U.S. \$ - and specify amount in figures  
and words) \$15,000.00\*\*\*\*\*

Fifteen Thousand Dollars and no/100-----

Expiration Date at Your Counter

July 24, 1999

Attention:

Available by draft(s) drawn (at your option) on you or your correspondent at sight accompanied by the following documents:  
Documents Required:See Attached Exhibit A

Special Instructions:

All documents to be forwarded in one cover, by mail, unless otherwise stated.

Partial Drawings: ☐ Permitted ☐ Not PermittedMultiple Drawings: ☐ Permitted ☐ Not Permitted

The undersigned ("Applicant") and First Security Bank of Idaho, N.A. ("First Security") hereby agree as follows:

**1. COMMITMENT TO LOAN.**

Applicant hereby applies to First Security for the issuance of an irrevocable letter of credit on substantially the terms and conditions above. This Agreement constitutes a promissory note in the principal sum of the amount of the letter of credit, which sum Applicant agrees to repay together with interest and expenses upon DEMAND. Applicant understands and agrees that in issuing its irrevocable letter of credit to the above named Beneficiary ("Beneficiary") for the account of Applicant, First Security undertakes to advance funds to Beneficiary which funds Applicant unconditionally agrees to repay to First Security on demand NOT WITHSTANDING ANY DISPUTE BETWEEN APPLICANT AND BENEFICIARY. APPLICANT AGREES WITH FIRST SECURITY THAT THE ONLY PRECONDITION OF APPLICANT'S OBLIGATION TO REPAY TO FIRST SECURITY the sum of any such advances to Beneficiary is First Security's written demand to Applicant for repayment. Applicant also understands that First Security has agreed to make advances only to Beneficiary (and not directly to Applicant) upon presentation to First Security (or to First Security's correspondent at First Security's option) of the documentation specified above. All such advances shall bear interest from the date of such advance until repaid in full (calculated on the basis of a three hundred sixty-five (365) day year) at 10% Fixed percent

( N/A % ) per annum above N/A

("Index Rate"). If the "Index Rate" selected is First Security's prime rate, it is defined as the bank's announced rate of interest used as a reference point from which the cost of credit to customers may be calculated, and is subject to change from time-to-time. The bank may make loans bearing interest above, at or below its prime rate. The "Index Rate" may change from time-to-time, and the interest payable under this Agreement will continue to fluctuate at the same increment above the "Index Rate". Any changes in the "Index Rate" under this agreement shall become effective without prior notice on the date on which the "Index Rate" changes. Should the rate of interest as calculated exceed that allowed by law, the applicable rate of interest will be the maximum rate of interest lawfully allowed. Interest shall be payable on demand, or if no demand, then monthly on the first day of each calendar month. This Agreement is to be construed under the laws of the State of Idaho. The makers, surties, guarantors, and endorsers of this Agreement jointly and severally waive presentment for payment, protest, notice of protest, and notice of non-payment under this Agreement and consent that this Agreement or any payment due under this Agreement may be extended or renewed without demand or notice, and further consent to the release of any collateral, or part thereof, with or without substitution. APPLICANT AUTHORIZES FIRST SECURITY TO AUTOMATICALLY DEBIT ITS ACCOUNT(S) WITH FIRST SECURITY IN THE AMOUNT OF ANY AND ALL SUMS OWED TO FIRST SECURITY IN CONNECTION HERewith.

**EXHIBIT**

A

**2. FEES AND EXPENSES PAYABLE APPLICANT.**

In addition to the amount of the letter of credit, Applicant agrees to pay to First Security an opening fee of Sixty-Five Dollars (\$ 65.00) together with a commitment fee equal to N/A percent (% per annum of the unused portion of the amount of the letter of credit, payable annually in advance through the expiry date of the same, and in any event not less than three Hundred Sixty-Five and 00/100 Dollars (\$ 365.00). Applicant agrees to pay any and all fees charged by correspondent banks including, but not limited to, confirmation fees, commissions and out-of-pocket expenses. Applicant also agrees to reimburse First Security for any and all out-of-pocket expenses incurred including, but not limited to, postage, wire and cable charges, and including any and all attorneys' fees and costs incurred by First Security in connection with such letter of credit, whether incurred in connection with the drafting and review of documentation related to or given to secure the letter of credit, or incurred prior to the institution of any legal proceedings, during the pendency of such proceedings, and including any such expenses incurred upon appeal. Applicant agrees to reimburse First Security for any and all attorneys' fees and costs incurred notwithstanding the fact that such fees and expenses may be incurred by First Security in defense of claims brought by Applicant against First Security. All obligations of Applicant are additionally secured by any deeds of trust or other documentation which reference this agreement or the obligations of Applicant hereunder.

**3. DEFAULT.**

In the event of any failure of Applicant to pay the principal amount of the letter of credit upon demand or any failure to pay interest, expenses or other sums as agreed, or in the event of any failure by Applicant to observe the terms and conditions of any other obligations of indebtedness of Applicant to First Security, or in the event of the filing of any petition in bankruptcy by or against Applicant, at the option of First Security the principal sum of the letter of credit (whether or not such sum shall then have been advanced) shall become immediately due and payable together with interest. Any portion of such amount which shall not have been drawn against by Beneficiary upon the expiry of the letter of credit (or, at such later date that First Security is able to ascertain that all drawings under the letter of credit have been received at the counters of First Security) shall be refunded to Applicant without interest after the deduction of any sums otherwise payable to First Security by Applicant (if any) IN THE ABSENCE OF ANY UNRESOLVED CONTROVERSY WITH RESPECT TO SUCH SUMS.

**4. DUTY OF ISSUER.**

NEITHER FIRST SECURITY NOR ANY CORRESPONDENTS SHALL BE IN ANY WAY RESPONSIBLE FOR PERFORMANCE BY BENEFICIARY OF ITS OBLIGATIONS TO APPLICANT, INCLUDING ANY CLAIM OF APPLICANT TO THE EFFECT THAT THE TRANSACTION BETWEEN APPLICANT AND BENEFICIARY IS TAINTED BY FRAUD, FORGERY OR OTHER DEFECT. To the extent permitted by applicable law, APPLICANT WAIVES APPLICANT'S RIGHT TO CAUSE FIRST SECURITY TO BE ENJOINED FROM HONORING DRAFTS PRESENTED PURSUANT TO THE LETTER OF CREDIT. Applicant understands and agrees that First Security shall honor any documents which First Security believes to be, on their face, in compliance with the terms and conditions of the letter of credit. First Security shall have no liability or responsibility for the form, sufficiency, accuracy, correctness, genuineness, or authority of any person signing, falsification, or legal effect of any documents presented to First Security (notwithstanding notification by Applicant of the existence of any latent or apparent defect) and First Security shall be held harmless insofar as it acts in accordance with the terms of this Agreement. Applicant acknowledges that any attempt by Applicant to cause First Security to be enjoined from honoring any presentation of documents under the letter of credit may be opposed by First Security, THE EXPENSE OF WHICH PROCEEDING SHALL BE BORNE BY APPLICANT.

**5. MISCELLANEOUS**

The letter of credit and performance by First Security, by any correspondents, by Applicant and by Beneficiary shall be governed by the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce and such revisions thereof as are in effect as of the date of issuance. Applicant agrees that the obligations of Applicant, of First Security, of any correspondents and of Beneficiary may be governed or modified by foreign laws, customs and usages of the trade, and to the extent that the same are subsequently determined by First Security, to be applicable. Applicant agrees and covenants to hold First Security and its correspondents harmless therefrom. All directions and correspondence relating to the letter of credit are to be sent at the risk and expense of Applicant and First Security assumes no responsibility for any inaccuracy, interruption, error or delay in transmission or delivery by post, telegraph, cable, or other means of communication, or for any inaccuracy of translation. The term "Applicant" shall include all of the undersigned and all obligations of Applicant shall be the joint and several obligations of each undersigned.

Dated 6/19/1997

Social Security Number / Tax I.D. Number
Account number to be charged for legal and drawings

APPLICANT

By

Title

This Application, Agreement and Note shall be deemed to be accepted by First Security and shall become effective upon the (1) execution of this agreement, and (2) upon issuance of the letter of credit described on the reverse side hereof.

Dated 6/19/1997

FIRST SECURITY BANK OF IDAHO, N.A.

By

Title

**FOR BANK USE ONLY**Branch Naughton Main No. 008Commercial  
Customer No.

APPROVED: Branch Lending Officer

Date

Officer No.

APPROVED: Branch Manager

Date

**CREDIT DIVISION USE ONLY**

APPROVED: Division Office

Date

Opening Fee:

Commitment Fee:



## ASSIGNMENT OF DEPOSIT ACCOUNT

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

**Borrower:** PAUL R. HARWARD  
1546 E. FAIRVIEW  
MERIDIAN, ID 83642

**Lender:** First Security Bank, N.A.  
NAMPA  
103 12TH AVENUE SOUTH  
NAMPA, ID 83651

**Grantor:** PAUL R. HARWARD and PHYLLIS HARWARD  
1818 E. GLENLOCH  
MERIDIAN, ID 83642

THIS ASSIGNMENT OF DEPOSIT ACCOUNT is entered into among PAUL R. HARWARD (referred to below as "Borrower"); PAUL R. HARWARD and PHYLLIS HARWARD (referred to below as "Grantor"); and First Security Bank, N.A. (referred to below as "Lender").

**ASSIGNMENT.** For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit accounts described below, to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Account.** The word "Account" means the deposit account described below in the definition for "Collateral."

**Agreement.** The word "Agreement" means this Assignment of Deposit Account, as this Assignment of Deposit Account may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

**Borrower.** The word "Borrower" means each and every person or entity signing the Note, including without limitation PAUL R. HARWARD.

**Collateral.** The word "Collateral" means the following described deposit account:

008-999-2749975 issued by Lender in an amount not less than \$15,000.00

together with: (a) all interest, whether now accrued or hereafter accruing; (b) all additional deposits hereafter made to the Account; (c) any and all proceeds from the Account; and (d) all renewals, replacements and substitutions for any of the foregoing.

**Event of Default.** The words "Event of Default" mean and include without limitation any of the Events of Default set forth below in the section titled "Events of Default."

**Grantor.** The word "Grantor" means PAUL R. HARWARD and PHYLLIS HARWARD. Any Grantor who signs this Agreement, but does not sign the Note, is signing this Agreement only to grant a security interest in Grantor's interest in the Collateral to Lender and is not personally liable under the Note except as otherwise provided by contract or law (e.g., personal liability under a guaranty or as a surety).

**Guarantor.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note, including all principal and interest, together with all other indebtedness and costs and expenses for which Grantor or Borrower is responsible under this Agreement or under any of the Related Documents. In addition, the word "Indebtedness" includes all other obligations, debts and liabilities, plus interest thereon, of Borrower, or any one or more of them, to Lender, as well as all claims by Lender against Borrower, or any one or more of them, whether existing now or later; whether they are voluntary or involuntary, due or not due, direct or indirect, absolute or contingent, liquidated or unliquidated; whether Borrower may be liable individually or jointly with others; whether Borrower may be obligated as guarantor, surety, accommodation party or otherwise; whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations; and whether such indebtedness may be or hereafter may become otherwise unenforceable.

**Lender.** The word "Lender" means First Security Bank, N.A., its successors and assigns.

**Note.** The word "Note" means the note or credit agreement dated June 26, 1987, in the principal amount of \$15,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the note or credit agreement.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**BORROWER'S WAIVERS AND RESPONSIBILITIES.** Except as otherwise required under this Agreement or by applicable law, (a) Borrower agrees that Lender need not tell Borrower about any action or inaction Lender takes in connection with this Agreement; (b) Borrower assumes the responsibility for being and keeping informed about the Collateral; and (c) Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Collateral or any delay by Lender in realizing upon the Collateral; and Borrower agrees to remain liable under the Note no matter what action Lender takes or fails to take under this Agreement.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) this Agreement is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral to Lender; (c) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (d) Lender has made no representation to Grantor about Borrower or Borrower's creditworthiness.

**GRANTOR'S WAIVERS.** Grantor waives all requirements of presentment, protest, demand, and notice of dishonor or non-payment to Grantor, Borrower, or any other party to the Indebtedness or the Collateral. Lender may do any of the following with respect to any obligation of any Borrower, without first obtaining the consent of Grantor: (a) grant any extension of time for any payment, (b) grant any renewal, (c) permit any modification of payment terms or other terms, or (d) exchange or release any Collateral or other security. No such act or failure to act shall affect Lender's rights against Grantor or the Collateral.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and warrants to Lender that:

**Ownership.** Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Rights to Grant Security Interest.** Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

**No Further Transfer.** Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

**No Defaults.** There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

**Proceeds.** Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

**LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL.** While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until: (a) there no longer is any indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

**EXHIBIT**

B

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TO 9-12884662594

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06-26-1997

# ASSIGNMENT OF DEPOSIT ACCOUNT (Continued)

Page 2

**EXPENDITURES BY LENDER.** If not discharged or paid when due, Lender may (but shall not be obligated to) discharge or pay any amounts required to be discharged or paid by Grantor under this Agreement, including without limitation all taxes, liens, security interests, encumbrances, and other claims, at any time levied or placed on the Collateral. Lender also may (but shall not be obligated to) pay all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses shall become a part of the indebtedness and, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of an Event of Default.

**LIMITATIONS ON OBLIGATIONS OF LENDER.** Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (a) for the collection or protection of any income on the Collateral, (b) for the preservation of rights against issuers of the Collateral or against third persons; (c) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (d) for informing the Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

**EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Default on Indebtedness.** Failure of Borrower to make any payment when due on the indebtedness.

**Other Defaults.** Failure of Grantor or Borrower to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or failure of Borrower to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor or Borrower under this Agreement, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The death of Grantor or Borrower or the dissolution or termination of Grantor or Borrower's existence as a going business, the insolvency of Grantor or Borrower, the appointment of a receiver for any part of Grantor or Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor or Borrower.

**Creditor or Foreclosure Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or Borrower or by any governmental agency against the Collateral or any other collateral securing the indebtedness. This includes a garnishment of any of Grantor or Borrower's deposit accounts with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor or Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor or Borrower gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or such Guarantor dies or becomes incompetent.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender, in good faith, deems itself insecure.

**Right to Cure.** If any default, other than a Default on Indebtedness, is curable and if Grantor or Borrower has not been given a prior notice of a breach of the same provision of this Agreement, it may be cured (and no Event of Default will have occurred) if Grantor or Borrower, after Lender sends written notice demanding cure of such default, (a) cures the default within twenty (20) days; or (b), if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

**Accelerate Indebtedness.** Lender may declare all indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Grantor or Borrower.

**Application of Account Proceeds.** Lender may obtain all funds in the Account from the issuer of the Account and apply them to the indebtedness in the same manner as if the Account had been issued by Lender. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the indebtedness will be paid to Grantor or Borrower as the interests of Grantor or Borrower may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the indebtedness. Lender also shall have all the rights of a secured party under the Idaho Uniform Commercial Code, even if the Account is not otherwise subject to such Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

**Other Rights and Remedies.** Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the Idaho Uniform Commercial Code, at law, in equity, or otherwise.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Cumulative Remedies.** All of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor or Borrower under this Agreement, after Grantor or Borrower's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Applicable Law.** This Agreement has been delivered to Lender and accepted by Lender in the State of Idaho. If there is a lawsuit, Grantor and Borrower agree upon Lender's request to submit to the jurisdiction of the courts of CANYON County, State of Idaho. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

**Attorneys' Fees; Expenses.** Grantor and Borrower agree to pay upon demand all of Lender's costs and expenses, including reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may pay someone else to help enforce this Agreement, and Grantor and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor and Borrower also shall pay all court costs and such additional fees as may be directed by the court.

**Multiple Parties.** All obligations of Grantor and Borrower under this Agreement shall be joint and several, and all references to Borrower shall mean each and every Borrower, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Agreement.

**Notices.** All notices required to be given under this Agreement shall be given in writing, may be sent by telefacsimile, and shall be effective



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TO 9-12084662594

P.05/08

06-26-1997

# ASSIGNMENT OF DEPOSIT ACCOUNT (Continued)

Page 3

when actually delivered or when deposited with a nationally recognized overnight courier or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notice under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. To the extent permitted by applicable law, if there is more than one Grantor or Borrower, notice to any Grantor or Borrower will constitute notice to all Grantor and Borrowers. For notice purposes, Grantor and Borrower will keep Lender informed at all times of Grantor and Borrower's current address(es).

**Power of Attorney.** Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (a) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (b) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral; and, in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

**Successor interests.** Subject to the limitations set forth above on transfer of the Collateral, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Waiver.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**BORROWER AND EACH GRANTOR ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREE TO ITS TERMS. THIS AGREEMENT IS DATED JUNE 26, 1997.**

BORROWER:

PAUL R. HARWARD

GRANTOR:

PAUL R. HARWARD

PHILIP HARWARD

**First  
Security  
Bank.**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. S-0029945-9001

ISSUED IN Boise, Idaho on 27 JUN 1997

BENEFICIARY: *John Aron*  
RESIDENTIAL WARRANTY CORPORATION  
5300 DERRY STREET  
HARRISBURG, PA 17111-3598

APPLICANT:  
PAUL R. HARWARD  
1546 E. FAIRVIEW  
MERIDIAN, ID 83642

AMOUNT: USD \*\*\*15,000.00  
FIFTEEN THOUSAND AND 00/100 UNITED  
STATES DOLLARS

DATE AND PLACE OF EXPIRY:  
24 JUL 1999  
Our counters.

CREDIT AVAILABLE WITH:  
First Security Bank, N.A.  
International Department  
999 Main, 3rd Floor  
Boise, Idaho 83702

BY: PAYMENT

AVAILABLE BY DRAFTS AT SIGHT DRAWN ON:  
First Security Bank, N.A.  
Boise, Idaho

GENTLEMEN:

WE HEREBY ISSUE THIS LETTER OF CREDIT IN YOUR FAVOR AVAILABLE BY  
YOUR DRAFT(S) DRAWN ON FIRST SECURITY BANK, N.A. BEARING THE  
CLAUSE: DRAWN UNDER FIRST SECURITY BANK, N.A. LETTER OF CREDIT  
NO. S-0029945-9001 ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

BENEFICIARY'S SIGNED STATEMENT CERTIFYING THAT "PAUL R. HARWARD  
HAS:

A. FAILED TO PROPERLY ENROLL A HOME, AS REQUIRED BY ITS AGREEMENT  
WITH RESIDENTIAL WARRANTY CORPORATION, WHICH RESULTED IN LOSS OR  
EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE INSURER, AND

B. FAILED TO PERFORM ITS WARRANTY OBLIGATION AS SET FORTH IN THE  
RESIDENTIAL WARRANTY CORPORATION PROGRAM, AS REQUIRED BY ITS  
AGREEMENT WITH RESIDENTIAL WARRANTY CORPORATION, WHICH RESULTED  
IN LOSS OR EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE  
INSURER, AND

EXHIBIT

C



L/C #: S-0029945-9001  
PAGE 2

C. FAILED TO COOPERATE IN THE DISPUTE SETTLEMENT PROCESS OR TO COMPLY WITH THE RESULTS OF THAT PROCESS, AS REQUIRED BY ITS AGREEMENT WITH RESIDENTIAL WARRANTY CORPORATION, WHICH RESULTED IN LOSS OR EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE INSURER, AND

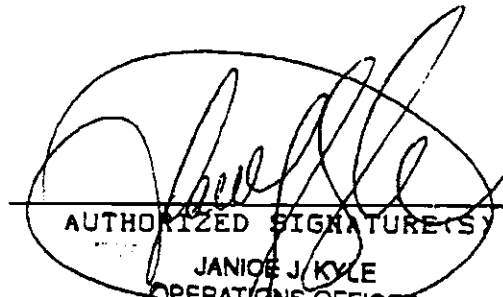
D. BUILDER HAS FAILED TO RENEW OR TO PROVIDE PROOF OF RENEWAL OF LETTER OF CREDIT AS REQUIRED BY THE AGREEMENT REGARDING SUBMISSION OF LETTER OF CREDIT, AND

E. OTHERWISE BREACHED ITS AGREEMENT WITH RESIDENTIAL WARRANTY CORPORATION WHICH RESULTED IN LOSS OR EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE INSURER."

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS OF ALL DRAFTS UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

REIMBURSEMENT INSTRUCTIONS:  
PAYMENT TO BE EFFECTED PER YOUR  
INSTRUCTIONS AGAINST CONFORMING  
DOCUMENTS PRESENTED AT OUR  
COUNTERS.

This letter of credit is subject to Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500.



A handwritten signature in black ink, appearing to read "Janice J. Kyle", is written over a horizontal line. Below the line, the text "AUTHORIZED SIGNATURE(S)" is printed. Underneath that, the name "JANICE J. KYLE" is printed, followed by "OPERATIONS OFFICER" and "INTERNATIONAL DEPARTMENT" on separate lines.

AUTHORIZED SIGNATURE(S)  
JANICE J. KYLE  
OPERATIONS OFFICER  
INTERNATIONAL DEPARTMENT

**RESIDENTIAL WARRANTY CORPORATION**

5300 Derry Street Harrisburg, PA 17111-3598

717-561-4480 FAX 717-561-4494

June 25, 1999

First Security Bank, N.A.  
Janice J. Kyle  
International Department  
999 Main, 3<sup>rd</sup> Floor  
Boise, ID 83702

RE: Request for payment of  
Letter of Credit No. S-0029945-9001 (15,000.00)  
Paul R. Harward

Dear Ms. Kyle:

As the Fiscal Administrator for Residential Warranty Corporation,  
I am writing to request payment under the above referenced Letter  
of Credit.

The reason for this request is due to the Account Party's failure  
to comply with the following paragraph of the amendment to the  
above-mentioned Letter of Credit. The paragraph states that the  
Beneficiary (Residential Warranty Corporation) may draw upon the  
Letter of Credit if "Builder has failed to renew or to provide  
proof of renewal of Letter of Credit as required by the Agreement  
Regarding Submission of Letter of Credit." Your records should  
reflect the fact that Paul R. Harward, (Builder) has not renewed  
the above-mentioned Letter of Credit.

Enclosed you will find the original Letter of Credit and the  
Beneficiary's Signed Statement. Should you have any questions,  
please contact me directly at extension 2200.

Sincerely,

RESIDENTIAL WARRANTY CORPORATION

Ann M. Cooper  
Fiscal Administrator  
Warranty Resolution Department

Enclosures

UPS Standard Overnight

**EXHIBIT**tabbies  
D

\$ 15,000.00

Harrisburg, Pennsylvania

Date 07/07/99

At sight pay to the order of RESIDENTIAL WARRANTY CORPORATION

\* Fifteen Thousand \* Dollars

Value received and charge the same account of

Drawn under First Security Bank, N.A. Letter of Credit No.S-0029945-9001

To First Security Bank, N.A.  
999 Main, 3<sup>rd</sup> Floor  
Boise, ID 83702

Residential Warranty Corporation

  
Kathleen D. Foley, V.P. J.P.

---

Cut along the perforated line.

REMINDER: Must endorse the back of the above document prior to release.

EXHIBIT

tabbies  
E

**First  
Security**

First Security Bank, N.A.

**OFFICIAL CHECK****210084320**

10-967210

Pay to the Order of

Residential Warranty Corporation

Office No.

111-01-42

Date

7/12/99

\$

\*\*\*USD15,000.00\*\*\*

Memo

Paul R. Hayward 8-0029945-9001

ISSUED BY INTEGRATED PAYMENT SYSTEMS, INC., Englewood, Colorado  
TO CITIBANK (NEW YORK STATE) BUFFALO, N.Y.

Authorized Signature by:

Drawer: First Security Bank, N.A.

NON NEGOTIABLE  
RECEIPT**EXHIBIT**

F

10-967210